

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SECOND APPEAL No 103 of 1984

For Approval and Signature:

Hon'ble MR.JUSTICE J.R.VORA

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1. Whether Reporters of Local Papers may be allowed : YES
to see the judgements?
 2. To be referred to the Reporter or not? : NO
 3. Whether Their Lordships wish to see the fair copy : NO
of the judgement?
 4. Whether this case involves a substantial question : NO
of law as to the interpretation of the Constitution
of India, 1950 of any Order made thereunder?
 5. Whether it is to be circulated to the Civil Judge? : NO

STATE OF GUJARAT

Versus

KANCHANGAURI KANTILAL

Appearance:

MR VB GHARANIA, AGP for Appellant

MR NS DESAI for Respondent No. 1

CORAM : MR.JUSTICE J.R.VORA

Date of decision: 30/06/2000

ORAL JUDGEMENT

1. This Second Appeal is filed against the order passed by Assistant Judge, Amreli, in Regular Civil Appeal No. 39 of 1982, whereby learned Assistant Judge dismissed the Appeal and confirmed the judgment and decree passed by Civil Judge (SD), Amreli, in Civil Suit

No. 174 of 1979.

2. Present respondent - plaintiff filed above stated Civil Suit No. 174 of 1979, in the court of Civil Judge (SD), Amreli, for declaration and permanent injunction against an order passed by the Collector, Amreli, to recover Rs. 8,526/- being the amount of composition fee, non-assessment fee and penalty, etc. The case of the plaintiff was that in Manek Para Vistar, Survey No. 96/1 was the ownership of the plaintiff, which he has purchased in 1970 and in that very year, he made constructions. Collector, Amreli, in 1970, initiated proceedings against the plaintiff u/s 66 of the Bombay Land Revenue Code for such construction, which according to Collector, was without permission, and ultimately, vide order dated 3.8.1973, the Collector, Amreli, ordered the plaintiff to pay Rs. 38/- towards N.A. fee from 1.8.1949 to 31st July, 1968 at yearly rate of Rs. 2 and Rs. 16/- towards NA fee from 1st August 1969 to 31st July 1973 at the yearly rate of Rs. 3.20, and Collector also imposed the penalty of Rs. 128 and also ordered to recover Rs. 8,496/- towards composition fee. This order, to recover composition fee was the subject matter of the suit. The dispute restricted to only composition fee levied, to be recovered by the Collector from the plaintiff - present respondent.

3. Learned trial judge observed that u/s 66 of the Bombay Land Revenue Code, the Collector had no authority to recover composition fee though he was empowered to recover N.A. fee and penalty and, therefore, the trial court partly decreed the suit of the plaintiff to the extent of composition fee and ordered the Collector not to recover the composition fee with the declaration that the said order of the Collector to recover composition fee was illegal and without jurisdiction.

4. The State filed Appeal on the above said judgment dated 12.2.1982 of the trial court, in the District Court, Amreli, which was registered as Regular Civil Appeal No. 39 of 1982 and in this Appeal, the State appellant - original defendant, raised various grounds, namely, that the suit was barred because suit notice was not legal and valid and that the trial court u/s 4 and Sec. 11 of Jurisdiction Act, had no jurisdiction to entertain the above suit and that the suit was time barred because the suit was required to be brought within one year under Article 100 of the Limitation Act, and that the plaintiff had given undertaking to the Collector to pay composition fee for the regularisation of the construction and, therefore, the plaintiff was bound by

the principle of estoppel. Above this legal ground, it was also contended by the appellant that the lower court erred in holding that the Collector had no authority u/s 66 of the Bombay Land Revenue Code to levy composition fee. Learned Assistant Judge, after hearing of the parties at length, dismissed the Regular Civil Appeal No. 39 of 1982, of the State, vide his order dated 29.6.1983 and hence this Second Appeal by the State original defendant.

5. Learned APP Mr. Gharania was heard at length for the appellant - State. Learned Advocate Mr.N.S. Desai for the respondent is not present as it appears that he has filed sick note.

6. This Court has framed the following substantial questions of law, to be decided in this Second Appeal.

(A) Whether in the facts and circumstances of the case, the lower appellate court has erred in not holding that it had no jurisdiction to try the present suit in view of the provisions of the Section-4 and 11 of the Revenue Jurisdiction Act.

(B) Whether in the facts and circumstances of the case, the lower appellate court erred in not holding that under Section-67 of the Land Revenue Code, the Collector has power to grant permission for N.A. use on payment of even composition fee.

(C) Whether in the facts and circumstances of the case, the lower Appellate Court has erred in not holding the plaintiff was estopped from challenging the levy of composition fee in view of his undertaking before the Collector, Amreli, to pay the composition fee for the regularisation.

(D) Whether in the facts and circumstances of the case the lower appellate Court was right in holding that there will be no bar of limitation to the plaintiff's suit because the order of the Collector is ultra vires and illegal and the party can treat it as non est.

7. First, we shall deal with the jurisdiction of the trial court, whether the same is barred u/s 4 and 11 of the Revenue Jurisdiction Act. It is contended that the

suit is barred u/s 4 and 11 of the Revenue Jurisdiction Act. On going through the record, on facts, it has been held by the courts below that the Collector had no authority u/s 66 of the Bombay Land Revenue Code to levy composition fee. The defence of the State was, in pursuance of various Government Resolutions, the Collector concerned was empowered to levy and recover composition fee. But, both the courts below rightly held that the executive instructions to the revenue officer contained in the Government Resolution cannot have the force of the law, as to bind the plaintiff, and except that, there is no provision of law, under which, composition fee can be levied and recovered by the Collector from the plaintiff. This goes to show that the order passed by the Collector, levying composition fee, was void ab initio and was without jurisdiction. That being so, this is not the order which is covered u/s 4 or 11 of the Bombay Revenue Jurisdiction Act. Therefore, the First Appellate Court rightly held that the suit was not hit by the Ss. 4 and 11 of the Bombay Revenue Jurisdiction Act, 1876 and that Civil Court had jurisdiction to entertain such suit.

8. So far as S.66 of the Bombay Land Revenue Code is concerned and S.67 is concerned, though it empowers the Collector to levy N.A. fee, penalty and also to initiate proceedings for eviction, but nowhere this provision empowers the Collector to recover composition fee for the construction made by the plaintiff on his own land. Both the courts below came to the right conclusion in this respect.

9. Then, coming to the next issue, the question is whether, the plaintiff was estopped from contending that the Collector was not empowered to levy composition fee in view of the undertaking, which he had furnished to the Collector. In this regard, the celebrated principle of law is, when the undertaking is given or taken in ignorance of a legal rights, then, the same will not be binding on the plaintiff or should not estop a party contending that such an undertaking was not according to law. Learned appellate judge rightly relied upon the ratio laid down by the Supreme Court in the case of SHRI KRISHAN vs. KURUKSHETRA UNIVERSITY, reported in AIR 1976 SC 376. Therefore, the lower Appellate court rightly held that the plaintiff was not estopped from contending and challenging the undertaking given by him that the action of the Collector was ultra vires and void.

10. Now, coming to the last issue of the appeal, as discussed above, on facts, both the courts below have

rightly held that the order passed by the Collector, Amreli, is void and ultra vires. In these circumstances, the order of the Collector can be treated by the party concerned to be non est, and when an order is stated to be non est, then no bar or limitation for taking recourse to law or filing of the suit and, therefore, the contention that the suit was time barred was rightly rejected by the First Appellate Court.

11. In view of the above discussion, there is no substance in this Appeal and the same is required to be dismissed. Hence, Appeal is dismissed with no order as to costs.

(J.R. Vora, J.)

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